# COMMONWEALTH OF MASSACHUSETTS

**MIDDLESEX, SS.**

**SUPERIOR COURT DEPARTMENT**
**CIVIL ACTION NO. 09-2284**

**ZOLL MEDICAL CORPORATION,**

**Plaintiff,**

**v.**

**PATTI L. POLK,**

**Defendant,**

**REMOVAL TO U.S. DISTRICT COURT**

**Commonwealth of Massachusetts**
**SUPERIOR COURT DEPARTMENT**
**THE TRIAL COURT**
**WOBURN**

MICV 2009-2284

I, C. Andrew Johnson, Deputy Assistant Clerk of the Superior Court, within and for said County of Middlesex, do certify that the annexed papers are true copies made by photographic process of pleadings entered in the Superior Court on this 15th Day of June in the year of our Lord 2009.

In testimony whereof, I hereunto set my hand and affix the seal of said Superior Court, at Woburn, in said County, this 15th Day of July, in the year of our Lord Two Thousand Nine.

C. Andrew Johnson
Deputy Assistant Clerk

4

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.

FILED
IN THE OFFICE OF THE
CLERK OF COURTS
FOR THE COUNTY OF MIDDLESEX
JUL 14 2009
CLERK

ZOLL MEDICAL CORPORATION,
Plaintiff,

vs.

PATTI L. POLK,
Defendant.

09 CA 11184

**NOTICE OF REMOVAL**

TO: CLERK OF COURT
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

**PLEASE TAKE NOTICE** that Defendant Patti L. Polk ("Polk" or "Defendant") hereby files this Notice of Removal, pursuant to 28 U.S.C. §§ 1441 and 1446(b). The grounds for removal are as follows:

1. Plaintiff, ZOLL Medical Corporation ("ZOLL"), commenced this action on or about June 12, 2009 by filing a Complaint in the Superior Court of Middlesex County, in the Commonwealth of Massachusetts, entitled ZOLL Medical Corporation v. Patti L. Polk, Civil Action No. 09-2284. Said action is now pending in that Court.

2. Polk received the Summons and Complaint on June 23, 2009. Copies of the Summons and Complaint are attached hereto as **Exhibit 1.**

3. There have been no further proceedings in this action.

4. This Notice of Removal has been filed within thirty days of notice of the initial pleading setting forth the claims upon which this action is based, as required by 28 U.S.C.

I hereby certify on 7/13/09 that the foregoing document is true and correct copy of the
☐ electronic docket in the captioned case
☐ electronically filed original filed on
☒ original filed in my office on 7/13/09
Sarah A. Thornton
Clerk, U.S. District Court
District of Massachusetts
By: Michael J. Cataldo
Deputy Clerk

1446(b) and the Federal Rules of Civil Procedure. The time period of thirty days from Polk's receipt of service of the Summons and Complaint expires on July 23, 2009.

5. The above-captioned action is a civil action over which this Court has diversity jurisdiction pursuant to 28 U.S.C. §1332, in that:

a) Plaintiff, ZOLL, is a Massachusetts corporation, with its principal place of business in Chelmsford, Massachusetts. Therefore, for purposes of 28 U.S.C. §1332, Plaintiff, ZOLL, is deemed a citizen of the Commonwealth of Massachusetts.

b) Defendant, Polk, is a citizen of the State of Tennessee, residing at 3106 Belwood Street, Nashville, Tennessee.

c) Based on the allegations of the Complaint, the above-captioned action is a civil action in which the amount in controversy exceeds the sum or value of $75,000.00, exclusive of costs and interest.

6. Therefore, this Court has original subject matter jurisdiction under 28 U.S.C. §1332(a)(1) because the action is between citizens of different states. Defendant, therefore, is entitled to have this action removed pursuant to 28 U.S.C. §1441(a).

7. This action is removable to this Court pursuant to 28 U.S.C. § 1441(a) in that the United States District Court for the District of Massachusetts embraces the location where the state court action is pending (i.e., Middlesex County, Massachusetts).

8. Defendant will give written notice of the filing of this Notice of Removal to Michael L. Rosen and Jamie L. Matthews, attorneys for ZOLL, and shall file copies of said Notice of Removal with the Clerk, Superior Court of Middlesex County, Woburn, Massachusetts.

9. Pursuant to Local Rule 81.1 of this Court, within thirty (30) days, the Defendant will file with the Clerk of this Court certified or attested copies of all records and proceedings in the State Court and a certified or attested copy of all docket entries there.

10. By filing this notice, Defendant Polk does not waive any defenses which may be available to her.

WHEREFORE, Defendant Polk removes the above-captioned action now pending against her in the Superior Court of Middlesex County, to the United States District Court for the District of Massachusetts, wherein it shall proceed as an action originally commenced therein.

Respectfully submitted,

DEFENDANT,
PATTI L. POLK,

By her attorneys,

/s/ Joy E. Taylor
John P. McLafferty, BBO # 639179
jpmclafferty@daypitney.com
Joy E. Taylor, BBO # 653711
jetaylor@daypitney.com
Day Pitney LLP
One International Place
Boston, Massachusetts 02110
(617) 345-4600

DATED: July 13, 2009

## CERTIFICATE OF SERVICE

I hereby certify that on the 13th of July, 2009, I caused a copy of the foregoing Notice of Removal to be served upon Plaintiff by mailing same, via overnight mail to attorneys for Plaintiff: Michael L. Rosen, Esq. and Jamie L. Matthews, Esq., Foley Hoag LLP, 155 Seaport Blvd., Boston, MA 02210.

/s/ Joy E. Taylor
Joy E. Taylor

**COMMONWEALTH OF MASSACHUSETTS**

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 09-2284

ZOLL MEDICAL CORPORATION,
Plaintiff,

vs.

PATTI L. POLK,
Defendant.

FILED
IN THE OFFICE OF THE
CLERK OF COURTS
FOR THE COUNTY OF MIDDLESEX
JUL 14 2009
CLERK

**NOTICE OF FILING OF NOTICE OF REMOVAL**
**TO UNITED STATES DISTRICT COURT**

Pursuant to 28 U.S.C. §1446(d), Defendant Patti L. Polk hereby gives notice that on July 13, 2009, she filed a Notice of Removal in the United States District Court for the District of Massachusetts, removing the above-captioned action from this Court to the United States District Court for the District of Massachusetts, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

An originally certified copy of the Defendant's Notice of Removal is attached hereto as **Exhibit A**.

Respectfully submitted,

DEFENDANT,
PATTI L. POLK,

By her attorneys,

John P. McLafferty, BBO # 639179
jpmclafferty@daypitney.com
Joy E. Taylor, BBO # 653711
jetaylor@daypitney.com
Day Pitney LLP
One International Place
Boston, Massachusetts 02110
(617) 345-4600

DATED: July 13, 2009

51444657.1

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13th of July, 2009, I caused a copy of the foregoing Notice of Filing of Notice of Removal to United States District Court to be served upon Plaintiff by mailing same, via overnight mail to attorneys for Plaintiff: Michael L. Rosen, Esq. and Jamie L. Matthews, Esq., Foley Hoag LLP, 155 Seaport Blvd., Boston, MA 02210.

Joy E. Taylor

Exhibit A

**DAY PITNEY** LLP

BOSTON CONNECTICUT NEW JERSEY NEW YORK WASHINGTON, DC

JOY E. TAYLOR
Attorney at Law

One International Place
Boston, MA 02110

T: (617) 345 4651 F: (617) 345 4745
jetaylor@daypitney.com

July 13, 2009

**VIA OVERNIGHT MAIL**

Clerk of the Court-Civil
Middlesex Superior Court
200 Trade Center
Woburn, MA 01801

**Re: ZOLL Medical Corporation v. Patti L. Polk**
**Civil Action No. 09-2284**

Dear Sir/Madam:

Pursuant to 28 U.S.C. § 1446(d) I have enclosed the following documents for filing in the above-referenced action:

1. Notice of Appearance for John P. McLafferty;
2. Notice of Appearance for Joy E. Taylor; and
3. Notice of Filing Notice of Removal to the United States District Court, with a certified copy of the Notice of Removal attached thereto.

Please docket these documents in your usual manner, and acknowledge your receipt by stamping the enclosed duplicate copy of the pleadings and returning them in the enclosed envelope.

Pursuant to 28 U.S.C. and Local Rule 81.1(a) of the United States District Court for the District of Massachusetts, we are required to file with the United State District Court, within thirty days of the filing of the Notice of Removal, certified or attested copies of all records and proceedings in the state court, including the docket and specifically the entry recording the filing of a copy of the Notice of Removal. Accordingly, we respectfully request that you copy and certify the foregoing documents as soon as possible. Please call me when these documents are ready so that I can make the appropriate arrangements for payment and delivery.

Thank you for your assistance in this matter. Please do not hesitate to contact me if you have any questions.

Very truly yours,

Joy E. Taylor

Joy E. Taylor

JET/mbh
Enclosures

Cc: Michael L. Rosen, Esq.
Jamie L. Matthews, Esq.
John P. McLafferty, Esq.

**COMMONWEALTH OF MASSACHUSETTS**

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 09-2284

ZOLL MEDICAL CORPORATION,
Plaintiff,

vs.

PATTI L. POLK,
Defendant.

FILED IN THE OFFICE OF THE CLERK OF COURTS FOR THE COUNTY OF MIDDLESEX JUL 14 2009 CLERK

**NOTICE OF APPEARANCE**

Kindly enter the appearance of John P. McLafferty, on behalf of the Defendant, Patti L. Polk, in connection with the above-captioned action.

Respectfully submitted,

DEFENDANT,
PATTI L. POLK,

By her attorneys,

John P. McLafferty, BBO # 639179
jpmclafferty@daypitney.com
Joy E. Taylor, BBO # 653711
jetaylor@daypitney.com
Day Pitney LLP
One International Place
Boston, Massachusetts 02110
(617) 345-4600

DATED: July 13, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13th of July, 2009, I caused a copy of the foregoing Notice of Appearance to be served upon Plaintiff by mailing same, via overnight mail to attorneys for Plaintiff: Michael L. Rosen, Esq. and Jamie L. Matthews, Esq., Foley Hoag LLP, 155 Seaport Blvd., Boston, MA 02210.

John P. McLafferty

**COMMONWEALTH OF MASSACHUSETTS**

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 09-2284

ZOLL MEDICAL CORPORATION,
Plaintiff,

vs.

PATTI L. POLK,
Defendant.

**NOTICE OF APPEARANCE**

Kindly enter the appearance of Joy E. Taylor, on behalf of the Defendant, Patti L. Polk, in connection with the above-captioned action.

Respectfully submitted,

DEFENDANT,
PATTI L. POLK,

By her attorneys,

John P. McLafferty, BBO # 639179
jpmclafferty@daypitney.com
Joy E. Taylor, BBO # 653711
jetaylor@daypitney.com
Day Pitney LLP
One International Place
Boston, Massachusetts 02110
(617) 345-4600

DATED: July 13, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13th of July, 2009, I caused a copy of the foregoing Notice of Appearance to be served upon Plaintiff by mailing same, via overnight mail to attorneys for Plaintiff: Michael L. Rosen, Esq. and Jamie L. Matthews, Esq., Foley Hoag LLP, 155 Seaport Blvd., Boston, MA 02210.

Joy E. Taylor

Joy E. Taylor

**Commonwealth of Massachusetts**
**MIDDLESEX SUPERIOR COURT**
**Case Summary**
**Civil Docket**

# MICV2009-02284
# Zoll Medical Corporation v Polk

| | | | |
|---|---|---|---|
| **File Date** | 06/15/2009 | **Status** | Disposed: transfered to other court (dtrans) |
| **Status Date** | 07/15/2009 | **Session** | L2 - Civil L2 CtRm 740 (Woburn) |
| **Origin** | 1 - Complaint | **Case Type** | D01 - Specific performance of contract |
| **Track** | A - Average track | **Lead Case** | **Jury Trial** No |

## DEADLINES

| | Service | Answer | Rule12/19/20 | Rule 15 | Discovery | Rule 56 | Final PTC | Judgment |
|---|---|---|---|---|---|---|---|---|
| **Served By** | | | 10/13/2009 | 08/09/2010 | 06/05/2011 | 07/05/2011 | | |
| **Filed By** | 09/13/2009 | 10/13/2009 | 11/12/2009 | 09/08/2010 | | 08/04/2011 | | 05/30/2012 |
| **Heard By** | | | 12/12/2009 | 09/08/2010 | | | 12/02/2011 | |

## PARTIES

**Plaintiff**
Zoll Medical Corporation
Chelmsford, MA
Active 06/15/2009

**Private Counsel 666923**
Jamie L Matthews
Foley Hoag LLP
Seaport World Trade Center West
155 Seaport Bvld
Boston, MA 02210-2600
Phone: 617-832-1000
Fax: 617-832-7000
Active 06/15/2009 Notify

**Defendant**
Patti L. Polk
Nashville, TN
Served: 06/23/2009
Served (answr pending) 06/23/2009

**Private Counsel 639179**
John P McLaffety
Day Pitney LLP
1 International Place
Boston, MA 02110-3179
Phone: 617-345-4600
Fax: 617-439-4453
Active 07/15/2009 Notify

**Private Counsel 653711**
Joy E. Taylor
Day Pitney LLP
One International Place
Boston, MA 02110
Phone: 617-345-4600
Fax: 617-345-4745
Active 07/15/2009 Notify

## ENTRIES

| Date | Paper | Text |
|---|---|---|
| 06/15/2009 | 1.0 | Complaint & civil action cover sheet filed |
| 06/15/2009 | | Origin 1, Type D01, Track A. |
| 06/15/2009 | 2.0 | Plaintiff Zoll Medical Corporation's Corporate Disclosure Form |
| 06/23/2009 | 3.0 | SERVICE RETURNED: Patti L. Polk(Defendant)06/23/09 Cerified mail return recepit mail |
| 07/15/2009 | 4.0 | Case REMOVED this date to US District Court of Massachusetts by deft Patti L. Polk, |
| 07/15/2009 | | Findings: Above action this day removed to U.S. District Court. |

**Commonwealth of Massachusetts**
**MIDDLESEX SUPERIOR COURT**
**Case Summary**
**Civil Docket**

# MICV2009-02284
# Zoll Medical Corporation v Polk

**EVENTS**

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. SUPERIOR COURT DEPARTMENT

ZOLL MEDICAL CORPORATION,

Plaintiff,

v.

PATTI L. POLK,

Defendant.

Civil Action No. 09- 09-2284

FILED IN THE OFFICE OF THE CLERK OF COURTS FOR THE COUNTY OF MIDDLESEX JUN 15 2009 CLERK

| | |
|---|---|
| 7156E000006/15/09CIVIL | 240.00 |
| 7156E000006/15/09SURCHARGE | 15.00 |
| 7156E000006/15/09SUMMONS | 5.00 |
| 7156E000006/15/09SECC | 20.00 |

**COMPLAINT**

Introduction

1. Plaintiff ZOLL Medical Corporation ("ZOLL") brings this action against its former employee, Defendant Patti L. Polk, for breach of her non-competition agreement. ZOLL seeks damages for Defendant's conduct, as well as permanent injunctive relief.

Parties

2. Plaintiff ZOLL Medical Corporation is a Massachusetts corporation with a principal place of business in Chelmsford, Massachusetts.

3. Upon information and belief, Defendant Patti Polk is a resident of Nashville, Tennessee.

Jurisdiction and Venue

4. This Court has personal jurisdiction over Defendant Polk under M.G.L. ch. 223A, § 3 as she transacted business in Massachusetts and because Polk consented to jurisdiction in Massachusetts.

5. Venue in this Court is appropriate because Plaintiff's principal place of business is located in Middlesex County.

## Facts

6. ZOLL is a global medical technology company engaged in the research, development, manufacturing, sales and marketing of products and services relating to cardiac resuscitation, including pacing, defibrillation, circulation and fluid resuscitation, as well as related software.

7. ZOLL possesses trade secrets and other confidential and proprietary information not known to the public or its competitors. ZOLL takes reasonable and diligent steps to maintain the confidentiality of that information as it is an integral part of its business.

8. ZOLL enjoys the goodwill of its customers which is generated by the high quality of the products and services it provides.

9. Polk was employed by ZOLL as a Territory Manager from July 1999 until her voluntary resignation in October 2005. In October 2006 Polk was again hired by ZOLL as a Hospital Territory Manager. At the time of her re-employment, Polk stated that she would remain with ZOLL for a number of years. In her position, Polk was responsible for the sale of ZOLL defibrillators and other products; developing an annual business plan and creating strategic sales analyses; developing customer account profiles; developing sales forecasts; implementing and maintaining customer sales tools; training customers; and maintaining and tracking demonstration and evaluation inventories in her territory. Central to these responsibilities was developing a knowledge of ZOLL's and its competitors' sales strategies. Polk's sales territory included the entire state of Tennessee with the exception of Memphis.

10. In connection with and in consideration of her re-employment with ZOLL, Polk executed an Agreement Concerning Inventions, Confidentiality, Nonsolicitation and Unfair Competition on October 25, 2006 (the "Agreement"), a copy of which is attached hereto as

Exhibit A. In the Agreement, among other things, Polk covenanted, for a period of eighteen months following the termination of her employment at ZOLL, not to undertake any employment or activity that is competitive with ZOLL's services. In addition, Polk covenanted, for a period of two years following her termination, not to solicit business from any current or known prospective customer of ZOLL or to provide or assist with the provision of services to any customer or known prospective customer of ZOLL.

11. The Agreement also requires that Polk neither use nor disclose any confidential information of ZOLL without ZOLL's prior written consent. Polk further agreed to return all ZOLL property immediately upon the termination of her employment with ZOLL.

12. The Agreement states that it shall be construed and governed by the laws of the Commonwealth of Massachusetts. In the Agreement, Polk agreed that she would be subject to the jurisdiction of the courts of the Commonwealth of Massachusetts.

13. In her position with ZOLL, Polk had access to confidential information and trade secretes of ZOLL, including detailed technical information about ZOLL's products and product development plans, detailed sales information and forecasts and other sensitive company strategic information.

14. In her position with ZOLL, Polk had relationships with a number of clients and prospective clients which were assets of ZOLL.

15. In late March 2009, Polk informed ZOLL that she was resigning in order to accept employment with Physio-Control, Inc., a division of Medtronic and a direct competitor of ZOLL. ZOLL and Physio-Control compete with each other throughout the United States and globally.

16. Upon information and belief Polk has accepted and commenced employment with

Physio-Control.

17. Polk's employment by Physio-Control has caused and will continue to cause irreparable harm to ZOLL's business relationships, goodwill, professional reputation, trade secrets, confidential information and revenues.

**COUNT I**

**BREACH OF CONTRACT**

18. ZOLL repeats and realleges the allegations of paragraphs 1 through 17 of the Complaint as if fully set forth herein.

19. At all material times, Polk was and continues to be subject to the non-competition provision of the Agreement. Pursuant to that provision, Polk agreed that for a period of eighteen months following the termination of her employment with ZOLL, she would not, in any capacity, undertake any employment or activity anywhere in the world which is competitive with the services of ZOLL.

20. This provision of the Agreement is reasonable under the circumstances and is necessary to protect the legitimate business interests of ZOLL.

21. Polk's employment by Physio-Control constitutes a breach of the Agreement.

22. As a result of the foregoing, Plaintiff has suffered and will continue to suffer irreparable harm and monetary damages.

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Award judgment to Plaintiff and against Defendant on Count I of this Complaint;

B. Award damages to Plaintiff in an amount to be determined by this Court;

C. Enter an Order permanently enjoining Polk from engaging in any employment or activity that competes with the services of ZOLL, including, without limitation, any employment with Physio-Control, for the balance of the term provided in the Agreement signed by Polk;

D. Award such other and further relief that this Court deems just and proper.

ZOLL MEDICAL CORPORATION

By its attorneys,

Jamie L. Matthews

Michael L. Rosen (BBO# 559954)
Jamie L. Matthews (BBO# 666923)
Foley Hoag, LLP
155 Seaport Blvd.
Boston, MA 02210
617-832-1000

Dated June 12, 2009

# EXHIBIT A

# ZOLL MEDICAL CORPORATION
## AGREEMENT CONCERNING INVENTIONS, CONFIDENTIALITY, NONSOLICITATION AND UNFAIR COMPETITION

This AGREEMENT CONCERNING INVENTIONS, NONSOLICITATION AND UNFAIR COMPETITION ("Agreement") is made as of the 25 day of October, 2006 (the "Effective Date"), by and between ZOLL Medical Corporation, including all subsidiaries, successors and assigns ("ZOLL") and Patti Buc ("Employee").

The parties agree that ZOLL has established and maintains at considerable expense confidential proprietary information related to cardiac resuscitation technology, and that ZOLL has established and maintains at considerable expense its customer relations. The parties also agree that ZOLL has vital business interests in protecting its customer goodwill and in maintaining the confidentiality of its trade secrets and confidential and proprietary information. With these principles in mind, and in consideration of good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, ZOLL and Employee covenant and agree as follows:

1. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(a) "Services" means research, development, production, sales, marketing or customer service relating to external cardiac pacing and defibrillation products, EMS data collection and management systems. Also, "Services" means any research, development, production, sales, marketing or customer service relating to any product, commercialized or under development by ZOLL, or by any entity that ZOLL shall acquire.

(b) "Confidential Information" means information belonging to ZOLL, whether reduced to writing (or in a form from which such information can be obtained, translated, or derived into reasonably usable form), or maintained in Employee's mind or memory, which derives independent economic value from not being readily known to or ascertainable by proper means by others who can obtain economic value from the disclosure or use of such information, including, without limitation, financial information, reports, and forecasts; inventions, improvements and other intellectual property; trade secrets; know-how; designs, processes or formulae; software and related code; market or sales information or plans; customer lists; and business plans, prospects and opportunities (such as possible acquisitions or dispositions of businesses or facilities) which have been discussed or considered by the management of ZOLL. Confidential Information includes the confidential information of others with which ZOLL has a business relationship. Notwithstanding the foregoing, Confidential Information does not include information in the public domain, unless due to breach of Employee's duties under this Agreement.

(c) "Customer" means any person or entity who (i) purchases products or otherwise receives Services from ZOLL at any time during Employee's employment with ZOLL; or (ii) was solicited in whole or in part, by Employee during Employee's employment with ZOLL for the purpose of receiving Services.

(d) "Inventions and Developments" means any and all inventions, developments, creative works and useful ideas of any description whatsoever, whether or not patentable. Inventions and Developments include, by way of example and without limitation, discoveries and improvements which consist of or relate to any form of Confidential Information.

(e) "Company-Related Inventions and Developments" means all Inventions and Developments which either (a) relate at the time of conception or development to the actual or demonstrably anticipated business of ZOLL or to its actual or demonstrably anticipated research and development; (b) result from or are based upon any work performed for ZOLL, whether or not during normal business hours; (c) are developed on ZOLL time; or (d) are developed through the use of ZOLL's Confidential Information, equipment and software, or other facilities or resources.

2. Confidentiality. At all times, Employee will keep in confidence and trust all Confidential Information, if any, and will not use or disclose any such Confidential Information without the prior written consent of ZOLL.

3. Documents, Records, etc. All documents, records, apparatus, equipment and other physical property, whether or not pertaining to Confidential Information, which are furnished to Employee by ZOLL or are produced by Employee in connection with Employee's employment by ZOLL will be and remain the sole property of ZOLL. Employee will return to ZOLL all such materials and property as and when requested by ZOLL. In any event, Employee will return all such materials and property immediately upon termination of Employee's employment for any reason. Employee will not take with him/her any such materials or property or any copies thereof upon such termination without written permission from ZOLL.

4. Ownership of Inventions and Developments. Employee agrees that all Company-Related Inventions and Developments which Employee conceives or develops, in whole or in part, either alone or jointly with others, during the term of Employee's employment with ZOLL will be the sole property of ZOLL. ZOLL will be the sole owner of all patents, copyrights and other proprietary rights in and with respect to such Company-Related Inventions and Developments. To the fullest extent permitted by law, such Company-Related Inventions and Developments will be deemed works made for hire.

Employee hereby transfers and assigns to ZOLL any proprietary rights which Employee may have or acquire in any such Company-Related Inventions and Developments, and Employee waives any moral rights or other special rights which Employee may have or accrue therein. Employee agrees to execute any documents and take any actions that may be required to effect and confirm such transfer and assignment and waiver. The provisions of this Section 4 will apply to all Company-Related Inventions and Developments which are conceived or developed during the term of Employee's employment with ZOLL, whether before or after the date of this Agreement, and whether or not further development or reduction to practice may take place after termination of Employee's employment, for which purpose it will be presumed that any Company-Related Inventions and Developments conceived by Employee which are reduced to practice within one year after termination of Employee's employment were conceived during the term of Employee's employment with ZOLL unless Employee is able to establish a later conception date by clear and convincing evidence. The provisions of this Section 4 will not apply, however, to any Inventions and Developments which may be disclosed in a separate Schedule which has been acknowledged by ZOLL and attached to this Agreement prior to its acceptance by ZOLL, representing Inventions and Developments made by Employee prior to Employee's employment by ZOLL.

5. Disclosure of Inventions and Developments. Employee agrees promptly to disclose to ZOLL, or any persons designated by it, all Company-Related Inventions and Developments which are or may be subject to the provisions of Section 4.

6. Obtaining and Enforcing Proprietary Rights. Employee agrees to assist ZOLL, at ZOLL's request from time to time and at ZOLL's expense, to obtain and enforce patents, copyrights or other proprietary rights with respect to Company-Related Inventions and Developments in any and all countries. Employee will execute all documents reasonably necessary or appropriate for this purpose. This obligation will survive the termination of Employee's employment, provided that ZOLL will compensate Employee at a reasonable rate after such termination for time actually spent by Employee at ZOLL's request on such assistance. In the event that ZOLL is unable for any reason whatsoever to secure Employee's signature to any document reasonably necessary or appropriate for any of the foregoing purposes (including renewals, extensions, continuations, divisions or continuations in part), Employee hereby irrevocably designates and appoints ZOLL and its duly authorized officers and agents as Employee's agents and attorneys-in-fact to act for Employee and on Employee's behalf, but only for the purpose of executing and filing any such document and doing all other lawfully permitted acts to accomplish the foregoing purposes with the same legal force and effect as if executed by Employee.

7. Nonsolicitation of Customers. During Employee's employment with ZOLL, and for two (2) years following the termination of Employee's employment (for whatever reason, whether voluntary or involuntary), Employee will not in any capacity:

(a) solicit the business or patronage of any current or known prospective Customer regarding Services for any person or entity other than ZOLL,

(b) divert, entice, or otherwise take away from ZOLL the business or patronage of any Customer, or attempt to do so,

(c) solicit or induce any Customer to terminate or reduce its relationship with ZOLL,

(d) provide or assist with the provision of Services to a Customer or known prospective Customer (other than on behalf of ZOLL),

(e) refer a Customer to another provider of Services; or

(f) communicate or attempt to communicate with any Customer other than on behalf of ZOLL regarding Services.

8. Unfair Competition. During Employee's employment with ZOLL and continuing for eighteen (18) months following the termination of Employee's employment (for whatever reason, whether voluntary or involuntary), Employee will not, directly or indirectly, in any capacity, undertake any employment or activity anywhere in the world which is competitive with the Services of ZOLL, or that are otherwise directly competitive with the Services.

For purposes of this Agreement, "directly competitive with the Services" shall mean competitive with the commercialization or development activities undertaken or planned (to the extent Employee was aware of such plans) by ZOLL at the time of cessation of Employee's employment with ZOLL.

The foregoing will not prevent Employee from owning up to (1) percent of the outstanding securities of a publicly-held corporation which competes with ZOLL.

9. Nonsolicitation of Employees. During the Term of Employment and for two (2) years thereafter, Employee will not:

(a) hire or employ, or assist others in hiring or employing any current employee of ZOLL through any enterprise with which he or she is associated, or

(b) hire or employ, or assist others in hiring or employing any consultant of ZOLL to perform work that competes with the Services provided by ZOLL; or

(c) recruit, solicit or induce (or in any way assist another person or enterprise in recruiting, soliciting or inducing) any employee or consultant of ZOLL to terminate his or her employment or other relationship with ZOLL.

10. Acknowledgments. Employee acknowledges and agrees that the restrictions set forth in Section 2-9 of this Agreement are intended to protect ZOLL's commercial relationships and goodwill (with its customers, prospective customers, vendors, consultants and employees), and are reasonable and appropriate for these purposes. Employee further acknowledges and agrees that this Agreement shall remain in full and force and effect notwithstanding any changes in the Employee's job, title, duties, status or compensation while employed by ZOLL or its successors, assigns or affiliates.

11. Disclosure of Agreement. Employee will disclose the existence and terms of this Agreement to any prospective employer, partner, co-venturer, investor or business lender prior to entering into an employment, partnership or other business relationship with such person or entity.

12. Third-Party Agreements and Rights. Employee represents to ZOLL that Employee's execution of this Agreement will not violate any obligations Employee may have to any other party.

13. Litigation and Regulatory Cooperation. During and after the Term of Employment, Employee shall cooperate fully with ZOLL in the defense or prosecution of any claims or actions now in existence or which may be brought in the future against or on behalf of ZOLL which relate to events or occurrences that transpired during the Term. Employee's full cooperation in connection with such claims or actions shall include, but not be limited to, being available to meet with counsel to prepare for discovery or trial and to act as a witness on behalf of ZOLL at mutually convenient times. During and after the Term, Employee also shall cooperate fully with ZOLL in connection with any investigation or review of any federal, state or local regulatory authority as any such investigation or review relates to events or occurrences that transpired during the Term. ZOLL shall compensate Employee at a reasonable rate for any time spent and reasonable out-of-pocket expenses incurred after the Term in connection with Employee's performance of obligations pursuant to this Section 13.

14. Injunction. Employee agrees that it would be difficult to measure any damages caused to ZOLL which might result from any breach by Employee of the promises set forth in this Agreement, and that in any event money damages would be an inadequate remedy for any such breach. Accordingly Employee agrees that if Employee breaches, or threatens to breach, any portion of this Agreement, ZOLL shall be entitled, in addition to all other remedies that it may have, to an injunction or other appropriate equitable relief to restrain any such breach without showing or proving any actual damage to ZOLL.

15. Consent to Jurisdiction. The parties hereby consent to the jurisdiction of the Courts for the Commonwealth of Massachusetts and the United States District Court for the District of Massachusetts. Accordingly, with respect to any such court action, Employee (a) submits to the personal jurisdiction of such courts; (b) consents to service of process; and (c) waives any other requirement (whether imposed by statute, rule of court, or otherwise) with respect to personal jurisdiction or service of process.

16. Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements between the parties with respect to any related subject matter.

17. Assignment; Successors and Assigns, etc. ZOLL may assign its rights under this Agreement without the consent of Employee in the event that ZOLL shall effect a reorganization, consolidate with or merge into any other corporation, partnership, organization or other entity, or transfer any or all of its properties or assets to any other corporation, partnership, organization or other entity. This Agreement shall inure to the benefit of and be binding upon ZOLL and Employee, their respective successors, executors, administrators, heirs and permitted assigns.

18. Enforceability/Severability. If any portion or provision of this Agreement is to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the court may amend such portion or provision so as to comply with the law in a manner consistent with the intention of this Agreement, and the remainder of this Agreement, or the application of such illegal or unenforceable portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, will not be affected thereby, and each portion and provision of the Agreement will be valid and enforceable to the fullest extent permitted by law. In the event that any provision of this Agreement is determined by any court of competent jurisdiction to be unenforceable by reason of excessive scope as to geographic, temporal or functional coverage, such provision will be deemed to extend only over the maximum geographic, temporal and functional scope as to which it may be enforceable.

19. Waiver. No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of any party to require the performance of any term or obligation of this Agreement, or the waiver by any party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

20. Amendment. This Agreement may be amended or modified only by a written instrument signed by Employee and by a duly authorized representative of ZOLL.

21. Governing Law. This is a Massachusetts contract and shall be construed under and be governed in all respects by the laws of the Commonwealth of Massachusetts, without giving effect to the conflict of laws principles of such Commonwealth. With respect to any disputes concerning federal law, such disputes shall be determined in accordance with the law as it would be interpreted and applied by the United States Court of Appeals for the First Circuit.

IN WITNESS WHEREOF, this Agreement has been executed as a sealed instrument by ZOLL, by its duly authorized officer, and by Employee, as of the Effective Date.

ZOLL MEDICAL CORPORATION

Employee

By:
Its:

InventionConfidentialityCompeteAgreementrev-4

TO PLAINTIFF'S ATTORNEY: PLEASE CIRCLE TYPE OF ACTION INVOLVED: — TORT — MOTOR VEHICLE TORT — CONTRACT — EQUITABLE RELIEF — OTHER

## COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT CIVIL ACTION

No. 09-2284

MIDDLESEX, ss

3

THE SUPERIOR COURT

Zoll Medical Corporation, Plaintiff(s)

v.

Patti L. Polk, Defendant(s)

FILED
IN THE OFFICE OF THE
CLERK OF COURTS
FOR THE COUNTY OF MIDDLESEX
JUN 30 2009
CLERK

## SUMMONS

To the above-named Defendant: Patti L. Polk

You are hereby summoned and required to serve upon Jamie L. Matthews plaintiff's attorney, whose address is Foley Hoag LLP, 155 Seaport, Blvd., Boston, MA 02210, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at 200 Trade Center, 2nd Floor, Woburn, MA 01801 either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, **Barbara J. Rouse**, Esquire, at ..........

the 18th day of June, in the year of our Lord 2009.

Clerk

NOTICE TO DEFENDANT — You need not appear personally in court to answer the complaint, but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days as specified herein and also file the original in the Clerk's Office.

NOTES.
1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all such defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

## PROOF OF SERVICE OF PROCESS

I hereby certify and return that on ..........................................................................................

20........., I served a copy of the within summons, together with a copy of the complaint in this action, upon the within-named defendant, in the following manner (See Mass. R. Civ. P. 4 (d) (1-5)):

Summons served by Certified Mail, Return Receipt Requested per Mass. R. Civ. 4(e)(3). Original Return Receipt is attached dated 6/23/09.

..........................................................................

Dated: ..........................................................................................., 20..........

**N.B. TO PROCESS SERVER:**
**PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX ON THE ORIGINAL AND ON COPY SERVED ON DEFENDANT.**

( ________________________________ )

( ..............................................., 20.......... )

( ________________________________ )

**COMMONWEALTH OF MASSACHUSETTS**

MIDDLESEX ......, ss.

SUPERIOR COURT
DEPARTMENT
OF THE
TRIAL COURT
CIVIL ACTION
No. 09-2284

Zoll Medical Corporation ......, Plff.

v.

Patti L. Polk ......, Deft.

SUMMONS
(Mass. R. Civ. P. 4)

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Judith C. Gallant
Paralegal
Foley Hoag LLP
155 Seaport Blvd.
Boston, MA 02210

**SENDER:** *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Patti L. Polk
3106 Belwood Street
Nashville, TN 37203

*COMPLETE THIS SECTION ON DELIVERY*

A. Signature
X ☐ Agent ☐ Address

B. Received by (*Printed Name*) Patti Polk

C. Date of Delive 6/23/

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandi
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
*(Transfer from service label)* 7006 3450 0003 0545 2684

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1

| CIVIL ACTION COVER SHEET | TRIAL COURT OF MASSACHUSETTS<br>SUPERIOR COURT DEPARTMENT<br>COUNTY OF MIDDLESEX | DOCKET NO. 09-2284 |
|---|---|---|
| PLAINTIFF(S) Zoll Medical Corporation | DEFENDANT(S) Patti L. Polk | |

| Type Plaintiff's Attorney name, Address, City/State/Zip Phone Number and BBO# | Type Defendant's Attorney Name, Address, City/State/Zip Phone Number (If Known) |
|---|---|
| Michael L. Rosen, BBO # 559954<br>Jamie Matthews, BBO # 666923<br>Foley Hoag LLP<br>155 Seaport Blvd., Boston, MA 02210<br>(617) 832-1000 | |

**TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)**

CODE NO. TYPE OF ACTION (specify) TRACK — IS THIS A JURY CASE?

**D01 Specific Performance of Contract - Average Track**

[ ] Yes [x] No

**The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.**

**TORT CLAIMS**
**(Attach additional sheets as necessary)**

FILED
IN THE OFFICE OF THE
CLERK OF COURTS
FOR THE COUNTY OF MIDDLESEX
JUN 15 2009
CLERK

A. Documented medical expenses to date:
1. Total hospital expenses $______
2. Total doctor expenses $______
3. Total chiropractic expenses $______
4. Total physical therapy expenses $______
5. Total other expenses (describe) $______

Subtotal $______

B. Documented lost wages and compensation to date $______
C. Documented property damages to date $______
D. Reasonably anticipated future medical expenses $______
E. Reasonably anticipated lost wages and compensation to date $______
F. Other documented items of damages (describe) $______

G. Brief description of plaintiff's injury, including nature and extent of injury (describe)

Total $______

**CONTRACT CLAIMS**
**(Attach additional sheets as necessary)**

**Provide a detailed description of claim(s):**

This action is for breach of a non-competition agreement. Plaintiff seeks a permanent injunction and any monetary damages that are determined through discovery. It is anticipated that damages are likely to be more than $25,000.

**TOTAL** $ >25,000

**PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT**

N/A

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record Jamie L. Matthews Date: 6/12/09

A.O.S.C. 3-2007

FOLEY HOAG LLP

Seaport World Trade Center West
155 Seaport Boulevard
Boston, MA 02210-2600

617 832 1000 *main*
617 832 7000 *fax*

09-2284

Jamie Matthews
617 832 1241 *direct*
jmatthews@foleyhoag.com

June 12, 2009

FILED
IN THE OFFICE OF THE
CLERK OF COURTS
FOR THE COUNTY OF MIDDLESEX
JUN 15 2009
CLERK

**Via FedEx**

Civil Clerk's Office
Middlesex Superior Court
200 TradeCenter
Woburn, MA 01801

**Re: ZOLL Medical Corporation v. Patti L. Polk**

Dear Sir or Madam:

Enclosed for filing please find the following:

(1) Complaint;

(2) Civil Action Cover Sheet;

(3) Corporate Disclosure Form;

(4) Check in the amount of $280.00 to cover the filing fee and purchase of a summons.

I would like to purchase a summons for this matter and have included the $5.00 fee in the enclosed check. Please mail it to me at your earliest convenience using the self-addressed, stamped envelope provided.

Please call me at the number listed above if you have any questions. Thank you for your attention to this matter.

Very truly yours,

Jamie Matthews

Enclosures

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. 2 SUPERIOR COURT DEPARTMENT

ZOLL MEDICAL CORPORATION,

Plaintiff,

v.

PATTI L. POLK,

Defendant.

Civil Action No. 09- 09-2284

FILED IN THE OFFICE OF THE CLERK OF COURTS FOR THE COUNTY OF MIDDLESEX JUN 15 2009 CLERK

**PLAINTIFF ZOLL MEDICAL CORPORATION'S CORPORATE DISCLOSURE FORM**

Pursuant to Supreme Judicial Court Rule 1:21, Plaintiff ZOLL Medical Corporation ("ZOLL"), through undersigned counsel, states as follows:

1. ZOLL does not have any parent corporation.

2. Based upon filings made with the United States Securities and Exchange Commission, there are not any publicly traded companies that own 10% or more of ZOLL's stock.

ZOLL MEDICAL CORPORATION

By its attorneys,

Jamie L. Matthews

Michael L. Rosen (BBO# 559954)
Jamie L. Matthews (BBO# 666923)
Foley Hoag, LLP
155 Seaport Blvd.
Boston, MA 02210
617-832-1000

Dated June 12, 2009

B3637560.1

**Commonwealth of Massachusetts**
**County of Middlesex**
**The Superior Court**

CIVIL DOCKET # **MICV2009-02284-L2**
**Courtroom Civil L2 - CtRm 740- 200 TradeCenter, Woburn**

RE: **Zoll Medical Corporation v Polk**

TO: Jamie L Matthews, Esquire
Foley Hoag LLP
Seaport World Trade Center West
155 Seaport Bvld
Boston, MA 02210-2600

## SCHEDULING ORDER FOR A TRACK

You are hereby notified that this case is on the track referenced above as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated, and case shall be resolved and judgment shall issue by **05/30/2012**

| STAGES OF LITIGATION | DEADLINES | | |
|---|---|---|---|
| | **SERVED BY** | **FILED BY** | **HEARD BY** |
| Service of process made and return filed with the Court | 09/13/2009 | 09/13/2009 | |
| Response to the complaint filed (also see MRCP 12) | | 10/13/2009 | |
| All motions under MRCP 12, 19, and 20 | 10/13/2009 | 11/12/2009 | 12/12/2009 |
| All motions under MRCP 15 | 08/09/2010 | 09/08/2010 | 09/08/2010 |
| All discovery requests **and depositions** served and non-expert depositions completed | 06/05/2011 | | |
| All motions under MRCP 56 | 07/05/2011 | 08/04/2011 | |
| Final pre-trial conference held and/or firm trial date set | | | 12/02/2011 |
| Case shall be resolved and judgment shall issue by **05/30/2012** | | | **05/30/2012** |

- **The final pre-trial deadline is not the scheduled date of the conference.**
- **You will be notified of that date at a later time.**
- **Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.**

Dated: 06/18/2009

Michael A. Sullivan
Clerk of the Court

Telephone: 781-939-2754